

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JULIUS BRYANT, individually and on behalf
of a class of all persons and entities similarly
situated,

Plaintiff,

v.

NEXTGEN LEADS LLC,

Defendant.

CASE NO.: 4:24-cv-00272-O

JUDGE REED O'CONNOR

APPENDIX IN SUPPORT OF MOTION TO COMPEL ARBITRATION

Pursuant to the Federal Arbitration Act and Federal Rule of Civil Procedure 12(b)(1),
Defendant NextGen Leads LLC respectfully files this Appendix in Support of Motion to Compel
Arbitration.

Respectfully submitted,

/s/Frank C. Brame

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cwager@mslawgroup.com

ATTORNEYS FOR NEXT GEN LEADS,
LLC

CERTIFICATE OF SERVICE

I certify that on May 28, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States District Court for the Northern District of Texas.

/s/ Frank Brame

Counsel for Defendant

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DECLARATION OF CHRIS KELLY

1. Pursuant to U.S.C. § 1746, I, Chris Kelly, declare as follows:
2. I am the CEO of NextGen Leads LLC ("NextGen"). I have personal knowledge of the facts stated herein, and if called upon to testify to those facts I could and would competently do so.
3. NextGen is an online customer acquisition firm focused on the insurance industry. NextGen utilizes internet advertising, online requests to be contacted (lead forms), and inbound telecommunications for various insurance products and services.
4. As CEO of NextGen, I am familiar with the consumer-facing websites operated by NextGen.
5. NextGen keeps and maintains the records in the ordinary course of its business operations as part of its business records, which are automatically generated by computer systems at the time of the event or occurrence to which the records relate.
6. NextGen owns and operates a website bearing the name "firstquotehealth.com," which advertises insurance quotes for healthcare and other products. The website contains a

submission page, where a consumer can enter his or her personal information, contact information, and request calls related to the requested products. The form submission page is located at <https://quote.firstquotehealth.com/quote> (“firstquotehealth.com” and the form submission page are collectively referred to as the “Site”).

7. Following receipt of the complaint in the above captioned lawsuit, NextGen researched the information stored in its database with respect to Plaintiff Julius Bryant. There is an entry with his name and telephone number – (469) 223-7782 – that was created from a from the Site on June 20, 2022 at or around 1:23 p.m. Central Daylight Time, from an Internet Protocol (“IP”) address of 162.206.192.110 (the “Visit”)

8. The data automatically generated from the Site at or near the time that they occur and maintained by NextGen for all submissions on the Site includes the following information for Plaintiff from the submission made on June 20, 202:

First Name:	Julius
Last Name:	Bryant
Email Address:	oldschool2.jb@gmail.com
Primary Phone:	469-223-7782
Address:	3208 Flintridge Dr
City:	Arlington
State:	TX
Zip Code:	76017
Date of Birth:	██████

9. This information for Plaintiff would not have been generated on the Site nor provided to NextGen had someone not entered the information and clicked the “Get Quote” button.

NextGen has no records of Plaintiff's name or phone number being obtained from any source or event other than the Visit.

10. After the user answers a series of questions and provides personal information to request to be contacted by NextGen, the user may click a "Get Quote" button. Immediately above the button the is the following text (the "Disclaimer"):

By clicking "GET QUOTE" below, I provide my express written consent by electronic signature to be contacted by third parties from this list of [Marketing Partners](#) about my request for information including, without limitation, by providing to me information, offers or advertisements by telephone call or text message to the number(s) I have provided on this form (including any cellular number), even if that number is on any local, state or national "Do Not Call" list, sent using an automatic telephone dialer or an artificial or prerecorded voice, and by email or live agent. This consent is not required as a condition of making a purchase. Message and Data rates may apply. Message frequency varies. Text "STOP" to 601-202-4796 to unsubscribe or "HELP" to 601-202-4796 for help. I have also read and accept the [Privacy Policy](#) and [Terms of Use](#). I understand that I can revoke this consent at any time. I understand that this website collected my phone number, email, first name, last name, address, date of birth, income and zip code.

11. The Disclaimer also includes a hyperlink to its "Terms of Use," and by pressing the submit button, the user acknowledges that he or she has "also read and accept the ... [Terms of Use](#)." A true and accurate copy of the linked Terms of Use on the date of the Visit are attached as Exhibit 1.

12. To resolve questions about the accuracy, integrity, or validity of the nature of the leads generated on the Site, NextGen utilizes, among other verification and fraud detection tools, the lead verification services of ActiveProspect, Inc. ("ActiveProspect"). Data relating to the user and interactions on that page, including keystrokes, mouse clicks, data entry, and other electronic communications of visitors to websites, are tracked and maintained by ActiveProspect via a "TrustedForm Certificate of Authenticity" that the information submitted was authentic and the result of an actual user interaction.

13. NextGen has possession of the Certificate of Authenticity from TrustedForm by ActiveProspect associated with the Visit. A true and correct copy of the Certificate of Authenticity is available online at

https://cert.trustedform.com/9a9320673d819ff740002206c489924ad340841c?shared_token=ZGs1VFFVeEdkMk4wYjFWclZHMHdWbGN4UzJOclZHMHhVV1pVVld0cFFtaENNM2hSVjNGaE1WZzNjMVJWZWxocVEwNDVTV1JaVW5wR2VIVmpZbWsyTWsxck1IcENjazl4V1RRd2RGaGFNV0ZrYjNWMIldlUkNVRkZ5Y25ScFVuRINWelpTZWpZdlowdEtkMWs5TFMwemJURjVRMDA1V0VwU05sSIBNbFZKYW1VNFJsSkJQVDA9LS00NDBjYzY5MzgwMDI1ZjA1ZTI2OTI0MWM1ZWmwZjMxZTIzMDdmYzQ5

14. The Certificate of Authenticity identifies the date, time, and length of the visit to the Site when Plaintiff's lead was created, the URL that was visited, the IP address, and the browser and operating system that they used.

15. The Certificate of Authenticity also contains a tab and a link for a "Session Replay" of what the user saw on the screen during their visit and their interaction. The Session Replay shows the interaction with the questionnaire on the Site for one minute and fifty-seven seconds.

16. The "Session Replay" of the Visit accurately shows the Site's form submission page and its corresponding Disclaimer language as they appeared on that date:

☐ Not Sure

First Name

Julius

Street Address

3208 Flintridge Dr

State

Alabama

Phone Number

(469) 223-7782

Telehealth Coverage

Last Name

Bryant

City

Arlington

Zip Code

76017

Email Address

oldschool2.jb@gmail

and secure?

Yes! We pride ourselves in security. We understand that entering personal health information online can seem risky. That's why we utilize some of the most advanced techniques to ensure that your information doesn't fall into the wrong hands.

Complete!

By clicking "GET QUOTE" below, I provide my express written consent by electronic signature to be contacted by third parties from this list of [Marketing Partners](#) about my request for information including, without limitation, by providing to me information, offers or advertisements by telephone call or text message to the number(s) I have provided on this form (including any cellular number), even if that number is on any local, state or national "Do Not Call" list, sent using an automatic telephone dialer or an artificial or prerecorded voice, and by email or live agent. This consent is not required as a condition of making a purchase. Message and Data rates may apply. Message frequency varies. Text "STOP" to 601-202-4796 to unsubscribe or "HELP" to 601-202-4796 for help. I have also read and accept the [Privacy Policy](#) and [Terms of Use](#). I understand that I can revoke this consent at any time. I understand that this website collected my phone number, email, first name, last name, address, date of birth, income and zip code.

GET QUOTE

← Previous Step

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2024


Chris Kelly (May 28, 2024 10:27 PDT)

Chris Kelly

CK Declaration ISO compel arb 05282024

Final Audit Report

2024-05-28

Created:	2024-05-28
By:	Lisa Robinson (lrobinson@mslawgroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAR8VVWD7s3rJkuSwTWFPmo6-zYnS-HwjW

"CK Declaration ISO compel arb 05282024" History






-  Document created by Lisa Robinson (lrobinson@mslawgroup.com)
2024-05-28 - 5:03:25 PM GMT
-  Document emailed to Chris Kelly (chris.kelly@nextgenleads.com) for signature
2024-05-28 - 5:03:51 PM GMT
-  Email viewed by Chris Kelly (chris.kelly@nextgenleads.com)
2024-05-28 - 5:25:16 PM GMT
-  Document e-signed by Chris Kelly (chris.kelly@nextgenleads.com)
Signature Date: 2024-05-28 - 5:27:24 PM GMT - Time Source: server
-  Agreement completed.
2024-05-28 - 5:27:24 PM GMT

EXHIBIT 1

TERMS AND CONDITIONS OF USE FOR THIS WEBSITE AND OUR SERVICE

THESE TERMS AND CONDITIONS ("TERMS") ARE A LEGAL AGREEMENT BETWEEN YOU, THE USER, AND US (THE OWNER OR OPERATOR OF THIS WEBSITE), AND IS A CONDITION TO YOUR USE OF THIS WEBSITE AND YOUR SUBMISSION OF INQUIRIES AND REQUESTS FOR INFORMATION. BY CLICKING "SUBMIT" OR SIMILAR BUTTON ON THE ONLINE INQUIRY OR REQUEST FORM, YOU AGREE TO BE BOUND TO THESE TERMS AND PROVIDE YOUR ELECTRONIC SIGNATURE ON THESE TERMS. YOU AGREE THAT EACH INTERACTION BETWEEN YOU AND THIS WEBSITE IS SUBJECT TO THESE TERMS. IF YOU DO NOT AGREE TO ANY OF THESE TERMS YOU MAY NOT USE THIS SERVICE OR SUBMIT ONLINE FORMS OR REQUESTS FOR INFORMATION.

THIS AGREEMENT PROVIDES THAT ALL DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING ARBITRATION. YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS OR TO PARTICIPATE IN OR BRING CLASS ACTIONS . YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY.

NextGen Leads LLC ("we" or "NextGen") is a lead generator, with its principal office at 701 B Street, Unit 1255, San Diego, CA 92101, and receives a fee from third parties for matching your inquiry with them. We do not charge you a fee for our services.

NextGen shares the information you submit with third parties who have products or services that may respond to your inquiry. Please review our Privacy Policy, which is a part of these terms. You hereby consent to be contacted by the third parties who respond to your inquiry or request for information by phone (including cell phone), mail, fax or text messages at the addresses, phone number(s) and email address(es) provided by you or collected by us from your inquiry, even if you are in the national Do Not Call list or other similar state lists.

We do not endorse or recommend the products or services of any particular third party. NextGen is not a licensed insurance provider, does not offer any insurance products or services, and has no responsibility for any products or services you may purchase or obtain from the third parties who receive your information. That is a contract or transaction solely between you and them. The third party determines what products and services you may qualify for and the terms of any arrangements between you and them, and makes all decision relating to their products and services. There is no guarantee that, by

submitting your information, you will be contacted by one or more third parties regarding the subject of your inquiry.

By responding to an online form or submitting your information, you are not applying for or making a purchase of insurance or any other product or service. When you submit information to a third party who has responded to your inquiry or expression of interest, that information will be subject to the privacy policies and any other applicable terms of the third party, and you are responsible for determining if those are acceptable to you. You will need to notify the third party directly if you do not wish to receive further communications from them.

You agree that NextGen is not to be liable for any loss or damage caused by your reliance on information obtained (i) through this website about third party products or services or regarding quotes and offers, or (ii) from the third parties to whom we have provided your information.

WARRANTY AND LIABILITY DISCLAIMER AND LIMITATIONS - WE PROVIDE THIS SERVICE "AS-IS" WITHOUT WARRANTY. NEXTGEN DISCLAIMS ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR PURSUANT TO A STATUTE, AS TO ANY MATTER WHATSOEVER RELATING TO THIS WEBSITE, OUR SERVICES OR ANY INFORMATION, PRODUCTS AND SERVICES PROVIDED, SUBMITTED OR SHARED IN CONNECTION WITH YOUR USE OF THIS WEBSITE, OR ANY THIRD PARTY INFORMATION, PRODUCT OR SERVICE OFFERED OR MADE AVAILABLE TO YOU, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ANY WARRANTY BASED ON COURSE OF DEALING.

YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, NEXTGEN AND ITS AFFILIATES, MEMBERS, OFFICERS AND DIRECTORS ARE NOT LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR OTHER INJURY YOU MAY CLAIM ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS WEBSITE AND/OR OUR SERVICES OR FOR ANY INFORMATION, PRODUCTS AND SERVICES OFFERED BY THIRD PARTIES TO YOU, OR OTHERWISE ARISING OUT OF THE USE OF THE WEBSITES, WHETHER RESULTING IN WHOLE OR IN PART, FROM BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

TO THE EXTENT THAT THESE LIMITATIONS ARE BY LAW NOT ENFORCEABLE, WE BOTH AGREE THAT NEXTGEN AND ITS AFFILIATES MEMBERS, OFFICERS AND DIRECTORS WILL NOT BE LIABLE TO YOU IN THE AGGREGATE FOR DAMAGES OF ANY TYPE IN CONNECTION WITH MATTERS RELATING TO THE

WEBSITE, OUR SERVICES, OR INFORMATION, PRODUCTS AND SERVICES OF THIRD PARTIES IN EXCESS OF US\$100 (ONE HUNDRED DOLLARS).

CONSENT TO ARBITRATE – Except where prohibited by law, You and we agree that all claims, disputes or controversies arising out of or relating to the use of this website, to the services provided by NextGen, any consents you have provided to us, or to any acts or omissions for which you may contend NextGen or its affiliates, members, officers or directors is liable relating thereto or to the information, products or services of third parties, shall be finally, and exclusively, settled by binding arbitration. The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA") and will be administered by the AAA.

The arbitration will take place in San Diego, CA, but may proceed telephonically in the event the total amount of the claim does not exceed \$2,500 U.S. dollars (if the claimant so chooses). The arbitrator shall be selected pursuant to the AAA rules, or otherwise as mutually agreeable to both parties. Should the AAA decline to accept a matter submitted for individual (non-class) arbitration, the arbitration shall be administered and conducted by a widely-recognized arbitration organization that is mutually agreeable to the parties, but neither party shall unreasonably withhold their consent. In the event the parties are unable to agree on a neutral arbitrator, the party making the claim may file suit in any court of competent jurisdiction solely for the purpose of requesting the appointment of an arbitrator for individual (non-class) arbitration, as provided for in the Federal Arbitration Act. To begin the arbitration process, a party must make a written demand therefor by registered or certified mail.

A judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The agreement to arbitrate is not an agreement to the joinder or consolidation of arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues or disputes involved. To the fullest extent permitted by applicable law, no arbitration under these terms shall be joined to an arbitration involving any other party subject to these terms, whether through class arbitration proceedings or otherwise.

You are entitled to a fair hearing, and the arbitration procedures are simpler and more limited than rules applicable in court. Arbitrator decisions are enforceable as any court order and are subject to very limited review by a court. By using NextGen's website or services and submitting online requests and forms, you consent to these restrictions.

We may modify or terminate this website, our services or the online forms at any time in our sole discretion. We may modify these terms at any time and will post revised or updated terms on this

website. The revised or updated terms will apply to any use of this website or submission of online form or request after the date the new or revised terms are posted. Your continued use of the website or submission of online forms or inquiries after such modifications means that you agree to the new or revised terms.

All waivers of any part of these terms must be in writing and signed. Any delay, waiver or failure to exercise any right or power arising from breach of these terms shall not be construed to be a waiver of any subsequent breach. These terms represent the entire, complete and final agreement between you and us regarding our services and this website.

These terms are governed by the laws of the State of Delaware, excluding its conflict of laws principles. If any part of this Agreement is determined to be invalid or unenforceable including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed replaced by a valid enforceable provision that most closely matches the intent of the original provision, and the remainder of these terms shall continue in effect.

You and we agree that a printed version of these terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these terms, the websites or our services to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. We do not endorse or recommend the products or services of any particular third party. NextGen is not a licensed insurance provider, does not offer any insurance products or services, and has no responsibility for any products or services you may purchase or obtain from the third parties who receive your information. That is a contract or transaction solely between you and them. The third party determines what products and services you may qualify for and the terms of any arrangements between you and them, and makes all decision relating to their products and services. However, NextGen does not market Medicare Advantage Plans or Medicare Part D (prescription drug plans) and prohibits its customers from using consumer information submitted on this site for the marketing or sale of Medicare Advantage Plans or Medicare Part D (prescription drug plans). Further, there is no guarantee that, by submitting your information, you will be contacted by one or more third parties regarding the subject of your inquiry.

PLEASE PRINT AND RETAIN A COPY OF THESE TERMS FOR YOUR RECORDS.